

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7213

DATE COMPLAINT FILED: 2/08/2017

DATE OF NOTIFICATION: 2/15/2017

DATE OF LAST RESPONSE: 03/27/2017

DATE ACTIVATED: 06/15/2017

EXPIRATION OF SOL: 10/17/2021

ELECTION CYCLE: 2016

COMPLAINANT:

Connecticut Republican Party

J.R. Romano, Jr.

RESPONDENTS:

Labor United for Connecticut and Paul

Filson in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4)(A)

52 U.S.C. § 30101(17)

52 U.S.C. § 30102

52 U.S.C. § 30103

52 U.S.C. § 30104(a)-(c), and (g)

52 U.S.C. § 30116(a)

52 U.S.C. § 30118

11 C.F.R. § 100.5(a)

11 C.F.R. § 100.22

11 C.F.R. § 104.5(c)

11 C.F.R. § 106.1(a)

11 C.F.R. § 109.10(b), (d), and (e)

11 C.F.R. § 111.43(e)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint in this matter alleges that Labor United for Connecticut and Paul Filson in his official capacity as treasurer ("LUC"), a Section 527 organization that was registered with the Connecticut State Elections Enforcement Commission ("CSEEC"), failed to register and report with the Federal Election Commission ("Commission") as a political committee and used non-federal funds to influence federal elections in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). In support of these allegations, the Complaint contends that LUC paid for digital advertising attacking Republican presidential candidate Donald Trump in October 2016 and therefore triggered federal political committee status, which restricted LUC to raising and spending only federal funds.¹

LUC asserts that its major purpose was not "the nomination or election of federal candidates," and therefore it did not meet the Act's definition of a political committee.³ As to any alleged reporting violations, LUC notes that it amended and correctly filed all reports regarding its independent expenditures with the Commission after receiving a Request for

¹ Compl. at 1, Attach. 1 (Jan. 23, 2017).

³ MUR 7213 Resp. at 2 (Mar. 27, 2017).

1 Additional Information ("RFAI") from RAD and seeking the advice of counsel.⁴ LUC does not
2 address the allegation that it impermissibly used state funds to oppose a federal candidate.

3 As set forth below, although over 50% of LUC's overall spending may have been for
4 federal campaign activity, we do not recommend that the Commission pursue this matter. LUC
5 was only active for a little over one month, having been established in September 2016 and
6 terminated with the CSEEC in December 2016. During that time, LUC raised approximately
7 \$198,000,⁵ \$48,750 of which was spent on one media buy,⁶ and the bulk of its contributions
8 (approximately \$109,400) were refunded.⁷ Considering these facts, we recommend, in
9 furtherance of the Commission's priorities and resources relative to other matters, that the
10 Commission exercise its prosecutorial discretion and dismiss the allegations that LUC failed to
11 register and report as a political committee in violation of 52 U.S.C. §§ 30102, 30103, or
12 30104(a),⁸ and that LUC failed to timely report independent expenditures in accordance with
13 52 U.S.C. § 30104(b) or (c), and 30104(g).⁹ We further recommend that the Commission find

⁴ Although LUC had timely filed a 48-Hour Report (originally mislabeled as a 24-Hour Report) disclosing its independent expenditures, on February 17, 2017, RAD sent LUC an RFAI to inform LUC that it had failed to file a Year-End Report. LUC, Request for Additional Information (Feb. 17, 2017). LUC later filed a 2016 Year-End Report on March 7, 2017. *See infra* pp. 18-20.

⁵ LUC, CSEEC Termination Report (Dec. 7, 2016) at 2, [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_Termination_Report_for_Independent_Expenditure_Political_Action_Committees_\(Non_Standard\)_45358.PDF](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_Termination_Report_for_Independent_Expenditure_Political_Action_Committees_(Non_Standard)_45358.PDF).

⁶ LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment (Oct. 21, 2016) at 9, http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_43394.PDF; *see also* LUC, 24-Hour Report of Independent Expenditures ("LUC 24-Hour Report") (Oct. 17, 2016).

⁷ LUC, CSEEC Termination Report at 6-12.

⁸ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

⁹ *See id.*

no reason to believe that LUC violated 52 U.S.C. §§ 30116(f) or 30118(a) by accepting or spending non-federal funds.

II. FACTS

LUC was formed by the SEIU Connecticut State Council as an Internal Revenue Code section 527 political organization and registered with CSEEC as an independent expenditure-only political committee.¹⁰ According to its treasurer, the purpose for creating LUC was to "raise and spend funds on independent expenditures concerning Connecticut state legislative races."¹¹ The organization was established on September 22, 2016,¹² and ceased activity just over one month later, on October 26, 2016.¹³ LUC terminated its registration with CSEEC on December 7, 2016, and with the Internal Revenue Service ("IRS") on January 31, 2017.¹⁴

In its brief existence, LUC raised \$198,071.32, spent \$88,682.74, and refunded the remaining \$109,388.58 it had raised to its contributors.¹⁵ LUC spent \$48,750.01 on what

¹⁰ MUR 7213 Resp., Aff. of Filson ¶ 2-3; LUC, CSEEC Registration (Sept. 22, 2016) https://seec.ct.gov/eCrisReporting/pdfviewer.aspx/noscan.pdf/SEEC8_10486_201609221411.PDF.

¹¹ MUR 7213 Resp., Aff. of Filson ¶ 2.

¹² *Id.* ¶ 3.

¹³ *Id.* ¶ 5.

¹⁴ LUC, CSEEC Termination Report (Dec. 7, 2016) at 1; MUR 7213 Resp., Aff. of Filson ¶ 6. LUC's former treasurer retained counsel, filed reports, and responded on LUC's behalf since its termination date.

¹⁵ LUC, CSEEC Termination Report at 2, 6-12 (Dec. 7, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election 3 at 6 (Oct. 21, 2016), http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_3_43284.PDF; LUC, CSEEC 24 Hour Independent Expenditure General Election 5 – Amendment at 7 (Nov. 1, 2016), http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_5_44358.PDF.

1 appears to be its only media buy,¹⁶ a series of web ads distributed beginning October 17, 2016.¹⁷
2 LUC disclosed its spending for those ads in its 24-Hour Independent Expenditure Report filed
3 with the Commission on October 17, 2016.¹⁸ LUC received an RFAI from RAD on February
4 17, 2017, regarding its failure to file a corresponding Form 5 fourth quarter or "Year-End"
5 Report for 2016.¹⁹ On March 7, 2017, LUC responded, filing a 2016 Year-End Report that
6 reflected the portion of the total media buy expense that LUC believed should have been
7 allocated to federal activity under Commission regulations.²⁰ On March 8, 2017, LUC amended
8 its 24-Hour Report, as a 48-Hour Report, and listed \$20,317 in independent expenditures, which
9 also reflected LUC's allocation between state and federal activity.²¹ The following chart
10 summarizes LUC's disbursements:

LUC Disbursements	
Contribution Refunds	\$109,388.58
Bank Fees	\$112.95
Public Communications	\$48,750.01
Polling	\$6,646.50
Consulting	\$33,173.28
Total	\$198,071.32

11

¹⁶ CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016).

¹⁷ LUC, 48-Hour Report at 3 (Mar. 8, 2017) ("LUC 48-Hour Report").

¹⁸ LUC 24-Hour Report (Oct. 17, 2017) ("LUC 24-Hour Report").

¹⁹ LUC, Request for Additional Information (Feb. 17, 2017).

²⁰ LUC, Year-End Report (Mar. 7, 2017) ("LUC 2016 Year-End Report").

²¹ LUC, 48-Hour Report; see MUR 7213 Resp. at 3-4 (citing 11 C.F.R. § 106.1(a)).

1 LUC contends that its organizational purpose was to elect pro-union legislators to the
2 Connecticut state legislature.²² Moreover, it states that at the time of its formation, "LUC had no
3 intention to carry out public communications or any other activities with respect to federal
4 elections."²³ LUC explains that at the recommendation of a political consultant, however, it
5 determined that it would be advantageous as part of its media strategy to tie state candidates to
6 then-Republican presidential candidate Trump, who they believed to be unpopular with
7 Connecticut voters.²⁴

8 According to the Response, LUC's only media buy was composed of three web ads that
9 were rotated equally.²⁵ The first contained no references to Trump or any other federal
10 candidate.²⁶ The second ad included a picture of Trump and the text: "Stop Donald Trump and
11 Republican [rotating state legislative candidate]'s attack on women and families Vote on 11/8."²⁷
12 The third ad included a picture of a woman's hand with the word "NO" written on it and the text:
13 "NO to the vicious Trump campaign against women and families. Vote NO on Trump and
14 Republican [rotating state legislative candidate] Nov. 8."²⁸

²² MUR 7213 Resp., Aff. of Filson ¶ 9.

²³ *Id.* ¶ 10.

²⁴ MUR 7213 Resp. at 3.

²⁵ *Id.*

²⁶ *Id.*, Attach. A.

²⁷ *Id.*, Attach. B.

²⁸ *Id.*, Attach. C.

1 **III. LEGAL ANALYSIS**

2 **A. Political Committee Status**

3 The Act and Commission regulations define a “political committee” as “any committee,
4 club, association or other group of persons which receives contributions aggregating in excess of
5 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
6 during a calendar year.”²⁹ In *Buckley v. Valeo*,³⁰ the Supreme Court held that defining political
7 committee status “only in terms of the annual amount of ‘contributions’ and ‘expenditures’”
8 might be overbroad, reaching “groups engaged purely in issue discussion.”³¹ To cure that
9 infirmity, the Court concluded that the term “political committee” “need only encompass
10 organizations that are under the control of a candidate or the *major purpose of which is the*
11 *nomination or election of a candidate.*”³² Accordingly, under the statute as thus construed, an
12 organization that is not controlled by a candidate must register as a political committee only if
13 (1) it crosses the \$1,000 threshold and (2) it has as its “major purpose” the nomination or election
14 of federal candidates.

15 Although *Buckley* established the major purpose test, it provided no guidance as to the
16 proper approach to determine an organization’s major purpose.³³ In *Massachusetts Citizens for*

²⁹ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

³⁰ 424 U.S. 1 (1976).

³¹ *Id.* at 79.

³² *Id.* (emphasis added).

³³ See, e.g., *Real Truth About Abortion, Inc. v. FEC* (formerly *Real Truth About Obama v. FEC*), 681 F.3d 544, 556 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311) (“RTAA”).

1 *Life v. FEC* (“*MCFL*”), the Supreme Court identified an organization’s independent spending as
2 a relevant factor in determining an organization’s major purpose.³⁴

3 Following *Buckley*, the Commission adopted a policy of determining on a case-by-case
4 basis whether an organization is a political committee, including whether its major purpose is the
5 nomination or election of federal candidates.³⁵ The Commission observed that “the major
6 purpose doctrine requires a fact-intensive analysis of a group’s campaign activities compared to
7 its activities unrelated to [federal] campaigns.”³⁶ To determine an entity’s “major purpose,” the
8 Commission explained that it considers a group’s “overall conduct,” including public statements
9 about its mission, organizational documents, government filings (*e.g.*, IRS notices), the
10 proportion of spending related to “Federal campaign activity (*i.e.*, the nomination or election of a
11 Federal candidate),” and the extent to which fundraising solicitations indicate funds raised will
12 be used to support or oppose specific candidates.³⁷ The Commission stated in the Supplemental
13 E&J that it compares how much of an organization’s spending is for “*federal campaign activity*”
14 relative to “activities that [a]re not campaign related.”³⁸

³⁴ 479 U.S. 238, 249, 262-263 (1986).

³⁵ Political Committee Status, 72 Fed. Reg. 5,595 (Feb. 7, 2007) (Supplemental Explanation and Justification) (“Supplemental E&J”).

³⁶ *Id.* at 5,601.

³⁷ *Id.* at 5,597, 5,605. In *CREW v. FEC*, the court considered the Commission’s application of the major purpose test, and instructed the Commission, when examining an organization’s major purpose to look beyond express advocacy and include spending on communications that “indicate a campaign-related purpose.” 209 F. Supp. 3d 77, 93 (D.D.C. Sept. 19, 2016).

³⁸ Supplemental E&J at 5,601, 5,605 (emphasis added).

1 **1. Application of the Test for Political Committee Status to LUC**

2 a. Statutory Threshold

3
4 To assess whether an organization has made an "expenditure," the Commission analyzes
5 whether spending on any of an organization's communications made independently of a
6 candidate constitute express advocacy under 11 C.F.R. § 100.22.³⁹ According to LUC's 2016
7 Year-End Report, LUC spent \$20,317 on independent expenditures opposing presidential
8 candidate Donald Trump.⁴⁰ Based on this report, LUC exceeded the \$1,000 statutory threshold
9 for political committee status.⁴¹

10 b. Major Purpose

11
12 LUC asserts in its Response that it "did not have the major purpose of influencing federal
13 elections."⁴² LUC supports this statement with the affidavit of its former treasurer, Paul Filson.
14 He states that LUC "was formed and funded by unions and it is run by unions and its goal for
15 2016 is to elect pro-worker/pro-union legislators to the Connecticut General Assembly."⁴³
16 Further, he states that when LUC was formed, it had "no intention to carry out public
17 communications or any other activities with respect to federal elections."⁴⁴ Filson states that

39 *See id.* at 5,606.

40 LUC 2016 Year-End Report.

41 52 U.S.C. §30101(4)(A); 11 C.F.R. § 100.5(a).

42 MUR 7213 Resp. at 4.

43 MUR 7213 Resp., Aff. of Filson ¶ 9 (quoting LUC's "Pitch and Plan"). LUC does not provide a copy of the mission statement document, known as the "Pitch and Plan," but instead support its statements with the affidavit of Paul Filson, the sole officer of LUC. *Id.* ¶ 1. As explained in the affidavit, LUC asserts that it did not provide a copy of the Pitch and Plan with its response because the document, which would go public with the file upon closure of the case, contains sensitive political plans and strategies that LUC's contributors do not wish to have made public. *Id.* at ¶ 16.

44 *Id.* ¶ 10.

1 LUC's mission statement or "Pitch and Plan" "specified 25 targeted Connecticut Senate and
2 House races" but made no reference to "federal candidates nor the federal election itself."⁴⁵ He
3 explains that the inclusion of Trump in these ads, which also expressly advocate against state
4 candidates, was not out of "concern that Trump could win in Connecticut; rather, including him
5 in some of the advertising was considered an effective message to persuade voters who disliked
6 him to oppose state legislative candidates in targeted races because they were running on his
7 ticket."⁴⁶

8 While the Commission has noted that it may consider statements made by an
9 organization in its analysis of an organization's major purpose,⁴⁷ it has also noted that such
10 statements are not necessarily dispositive.⁴⁸ Under the Commission's case-by-case approach, the
11 Commission considers the organization's "overall conduct," including its disbursements,
12 activities, and statements.⁴⁹

13 The Commission also considers, as part of this case-by-case approach, the proportion of
14 an entity's spending related to federal campaign activity compared to its total spending.
15 However, when considering the proportion of total spending to spending related to federal

⁴⁵ *Id.*; see also *id.* ¶¶4, 14 (stating that LUC's stated purpose on organizational documents submitted to the IRS was "[p]artisan electoral activity in Connecticut," later amended to specify "[p]artisan electoral activity in Connecticut primarily in state elections").

⁴⁶ *Id.* ¶ 11.

⁴⁷ Supplemental E&J at 5,606.

⁴⁸ See *Real Truth About Obama v. FEC*, No. 3:08-cv-00483, 2008 WL 4416282, at *14 (E.D. Va. Sept. 24, 2008) ("A declaration by the organization that they are *not* incorporated for an electioneering purpose is not dispositive.") (emphasis in original), *aff'd*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds*, 130 S. Ct. 2371 (2010), *remanded and decided*, 796 F. Supp. 2d 736, *affirmed sub nom. Real Truth About Abortion v. FEC*, 681 F.3d 544 (4th Cir. 2012), *cert. denied*, 81 U.S.L.W. 3127 (U.S. Jan. 7, 2013) (No. 12-311).

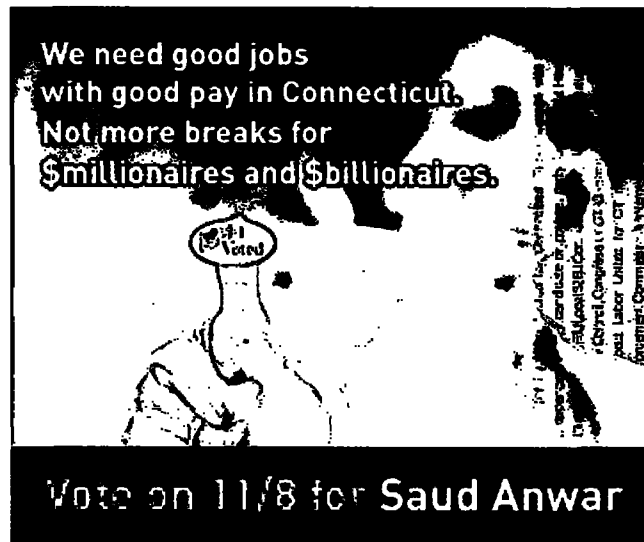
⁴⁹ Supplemental E&J at 5,597.

1 campaign activities, the Commission has never set a threshold on the proportion of spending on
2 federal campaign activities required for political committee status and has not determined
3 "whether it is *necessary* to cross a 50 percent threshold to determine an organization's major
4 purpose."

5 Turning to LUC's relevant spending on federal campaign activity, LUC spent \$48,750.01
6 on one media buy that included three ads run equally (\$16,250 per ad). Two of these ads, which
7 expressly advocated the defeat of Donald Trump, were reported as independent expenditures
8 with the Commission, and are thus relevant in determining whether LUC's major purpose was
9 the nomination or election of a federal candidate.

These ads did not, however, entirely focus on federal candidates, and thus not all of the ads' costs should be considered federal campaign activity. Using the Commission's allocation regulations at 11 C.F.R. § 106.1(a),⁵² the first ad (below), which makes no mention of Trump, was 100% non-federal activity (\$16,250).⁵³

First Ad:

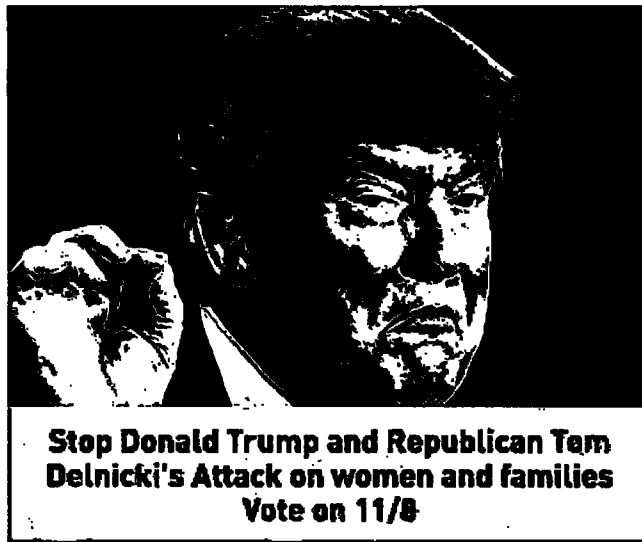


⁵² Expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified Federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. 11 C.F.R. § 106.1(a). This attribution method is also used to allocate expenditures between Federal candidates and non-Federal candidates. Advisory Op. 2004-37 (Citizens for Waters) at 5. The attribution is determined by the proportion of space devoted to each candidate, as compared to the total space devoted to all candidates. *Id.* Where an advertisement referencing more than one candidate expressly advocates the defeat of one candidate, expenditures should be allocated "among the electoral races, based on a time or space analysis." Advisory Op. 2010-10 (National Right to Life PAC) at 6.

⁵³ See MUR 7213 Resp. at 3, Attach. A.

1 The second ad (below) was 87.5% federal (\$14,218.75) and 12.5% non-federal
2 (\$2,031.25) because it included an image of Trump, which was 75% of the ad, and a text portion,
3 which comprised 25% of the ad and devoted equal space opposing both Trump (12.5%) and a
4 state candidate (12.5%).⁵⁴

5 Second Ad:



6

⁵⁴ See *id.* at 3, Attach. B.

1 The third ad (below) was 75% federal activity (\$12,187.50) and 25% non-federal
2 (\$4,062.50) because the ad contained two sentences—the first of which referenced only Trump,
3 and the second referenced both Trump and the state candidate.⁵⁵ The picture portion of the ad,
4 because it is not specific to any candidate, is allocated in the same proportion as the text.⁵⁶

5 Third Ad:



6
7 Thus the total federal spending for independent expenditures is \$26,406.25 (\$14,218.75 +
8 \$12,187.50) of the total \$48,750.01, or 54% of the total amount spent on the ads.

9 LUC contends that its total allocation ratio for all three media buys, as reflected in its
10 amended 48-Hour Report and Year-End Report, was 42% federal and 58% non-federal. LUC's

⁵⁵ See *id.* at 4, Attach. C.

⁵⁶ Where part of an ad is not specific to any candidate, such as the image here, but the remainder of the ad is allocable between multiple candidates, the non-specific part of the ad must be allocated among the candidates in the same proportion as the specific part of the ad. Factual and Legal Analysis at 3, MUR 6161 (Hocking County Republican Party Central Committee) (section of advertisement that referenced no particular candidate should be allocated based upon "the federal proportional share"); Cf. Advisory Op. 2006-11 (Washington Democratic State Central Committee) at 4 ("Because no part of the cost of the mass mailing may be left unattributed to either the clearly identified Federal candidate or the State Party Committee, the percentage of the cost of the mailing to be attributed to the clearly identified candidate is equal to the amount of space devoted to the candidate as compared to the total space devoted to both that candidate and the generically referenced party candidates.").

1 calculation attributes a smaller percentage for federal activity because its calculations for the
2 second and third ads differ from the analysis here. LUC contends that the second ad should be
3 75% federal and 25% non-federal because the image depicts only Trump and the text mentions
4 both Trump and the state candidate.⁵⁷ This analysis, however, fails to account for the fact that
5 the image of Trump itself is 75% of the ad. With respect to the third ad, LUC contends that the
6 allocation should be 50% federal and 50% non-federal because the ad includes an image that was
7 not specific to any candidate and names both a federal and non-federal candidate in the text.⁵⁸
8 However, while the text of the ad names both a federal and a non-federal candidate, it does not
9 allocate equal space to both candidates. The text of the ad states: "NO to the vicious Trump
10 campaign against women and families. Vote NO on Trump and Republican [rotating state
11 legislative candidate] Nov. 8."⁵⁹ One sentence is solely devoted to voting against Trump, and
12 the following sentence equally devoted to opposing Trump and the state candidate. Thus, 75%
13 of the space in the text is dedicated to the federal candidate, and 25% to the non-federal
14 candidate, and the picture with no reference to a candidate should be apportioned accordingly.
15 Thus, LUC's lower federal allocation is not supported by the content of the ads.

16 LUC also reported making \$39,819.78 in payments to Red Horse Strategies for polling
17 (\$6,646.50) and consulting on mailers (\$33,173.28). We have no information as to the nature of
18 polling. However, the treasurer's affidavit explains that, at the recommendation of its political

⁵⁷ MUR 7213 Resp. at 3.

⁵⁸ *Id.* at 4.

⁵⁹ *Id.*, Attach. C.

1 consultant, LUC decided to include Trump in its advertising.⁶⁰ Consequently, the record
2 suggests that at least some of the payments for consulting may be attributed to federal campaign
3 activity.⁶¹

4 In sum, for the roughly one month that LUC was operating, LUC appears to have spent
5 approximately \$26,406.25 on independent expenditures expressly advocating the defeat of a
6 federal candidate as compared to its overall media budget of \$48,750.01. In addition, a portion
7 of LUC's other major disbursement, \$33,173.28 in consulting payments, appears to have been
8 attributable to federal activity, although we lack information on the correct allocation for those
9 payments. The facts thus show that more than 50% of LUC's disbursements may have been for
10 federal activity and, therefore, LUC may have triggered political committee status. However, as
11 noted, LUC was only active for one month, and during that time made only one media buy,
12 worth \$48,750.01. Further, LUC refunded most of the contributions it accepted and substantially
13 disclosed its independent expenditures for the public record.

14 Under these circumstances, we do not believe that this matter merits the use of further
15 agency resources and recommend that the Commission dismiss as a matter of prosecutorial
16 discretion the allegations that LUC violated 52 U.S.C. §§ 30102, 30103, or 30104 by failing to
17 register and report as a political committee.⁶²

⁶⁰ *Id.* at 3, Aff. of Filson ¶ 11.

⁶¹ Some additional ambiguity is created by LUC listing on its report with CSEEC that the payments for consulting were made on October 26, 2016, nine days after the web ads began being distributed. LUC, CSEEC 24 Hour Independent Expenditure General Election 5 – Amendment at 7 (Nov. 1, 2016); LUC 48-Hour Report at 3. However, because LUC reported no other payments for consulting, it appears that this is the payment relating to the referenced consulting.

⁶² *See Heckler*, 470 U.S. 821.

B. Use of Impermissible Funds

The Complaint also alleges that LUC violated the Act by spending non-federal funds to support or oppose a federal candidate.⁶³ Even if LUC was in fact a federal political committee, it appears to have acted as an independent expenditure-only political committee, which could have accepted (and spent) contributions in unlimited amounts and from otherwise prohibited sources.⁶⁴

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a political party committee or its agent.⁶⁵ Here, the Complaint fails to allege any facts indicating that LUC engaged in coordination with a federal candidate or party committee and it was registered as an independent expenditure committee with the State of Connecticut. Further, LUC asserts that it included Trump in its communications not as a result of coordination with any federal candidate, but on the advice of a consultant in order to persuade voters who disliked Trump to oppose state legislative candidates in targeted races because they were running on his ticket. Accordingly, it appears that it would have operated as an independent expenditure-only committee that could have permissibly accepted (and spent) non-federal funds, and we therefore

⁶³ Compl. at 1.

⁶⁴ See Advisory Op. 2010-11 (Commonsense Ten) at 3 (citing *Citizens United*, 558 U.S. 310 and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*) and stating that "corporations, labor organizations, and political committees may make unlimited independent expenditures from their own funds, and individuals may pool unlimited funds in an independent expenditure-only political committee").

⁶⁵ 52 U.S.C. § 30101(17).

1 recommend that the Commission find no reason to believe that LUC violated 52 U.S.C.
2 §§ 30116(f) or 30118(a) by accepting or spending non-federal funds.

3 **C. Failure to Timely Report Independent Expenditures**

4 Under the Act, persons must file reports disclosing independent expenditures over a
5 certain amount.⁶⁶ If any person, including a political committee, makes independent
6 expenditures aggregating \$10,000 or more within a calendar year with respect to a given election
7 any time prior to the 20th day before the election, the person must file a 48-Hour Report
8 disclosing those expenditures.⁶⁷ If the person makes independent expenditures aggregating
9 \$1,000 or more with respect to a given election after the 20th day before the date of an election,
10 but more than 24 hours before the date of an election, the person must file a 24-Hour Report
11 disclosing those expenditures.⁶⁸ In addition to these 24-Hour and 48-Hour Reports, persons who
12 are not political committees must file a quarterly report for any quarterly period in which
13 independent expenditures exceed \$250 with respect to a given election and for any subsequent
14 quarterly period during the calendar year when additional independent expenditures are made.⁶⁹

⁶⁶ See 52 U.S.C. § 30104(b)(4)(H)(iii), (5)(B)(iii), and (c).

⁶⁷ *Id.* § 30104(g)(2); 11 C.F.R. § 109.10(c). The person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

⁶⁸ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The person must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

⁶⁹ 11 C.F.R. § 109.10(b); see 52 U.S.C. § 30104(c); see also Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)). Political committees accomplish this disclosure via ongoing quarterly and pre- and post-election reports regular reporting of contributions and expenditures. See 52 U.S.C. §§ 30104(a)(4), (b). If LUC were a political committee, it should have reported its contributions and expenditures in this manner. See *supra* p.16 (recommending dismissal as to the allegations that LUC failed to register and report as a political committee).

1 Such reports must disclose the independent expenditures and contributions in excess of \$200
2 made for the purpose of furthering the reported independent expenditures.⁷⁰

3 Here, LUC did not report its independent expenditures as a political committee but as a
4 "person (other than a political committee)," under 52 U.S.C. § 30104(c). It filed a 24-Hour
5 Report on October 17, 2016 reporting an independent expenditure in the amount of \$48,750.01
6 and contributions of \$172,000.⁷¹ On March 7, 2017, 35 days after receiving an RFAI from
7 RAD, LUC filed a Year-End Report,⁷² and on March 8, 2017, LUC amended its 24-Hour Report
8 as a 48-Hour Report.⁷³ Both of those March-filed reports indicate a reduction in the amount of
9 the independent expenditures, now reporting only \$20,317.⁷⁴ These reports also disclose lower
10 amounts of total contributions, with the 48-Hour Report indicating \$80,000 in total contributions
11 and the Year-End Report indicating \$86,071.32 in total contributions.⁷⁵

12 In its response to the Complaint in MUR 7213, LUC explains that these discrepancies
13 arose from the original 24-Hour Report being filed "without legal analysis of which
14 contributions to report and how to divide costs between the federal and state content of the
15 ads."⁷⁶ After receiving the RFAI and Complaint in MUR 7213, LUC sought the assistance of
16 counsel and filed the 2016 Year-End and amended 48-Hour Reports. In these later filed reports,

⁷⁰ 52 U.S.C. § 30104(c)(1), (2); 11 C.F.R. § 109.10(e).

⁷¹ LUC 24-Hour Report.

⁷² LUC 2016 Year-End Report.

⁷³ LUC 48-Hour Report. As the expenditure occurred more than 20 days prior to the election a 48-Hour Report was appropriate rather than a 24-Hour Report. 52 U.S.C. § 30104(g)(1) and (2).

⁷⁴ Compare LUC 24-Hour Report with LUC 2016 Year-End Report and LUC 48-Hour Report.

⁷⁵ *Id.*

⁷⁶ MUR 7213 Resp. at 4.

1 LUC included only contributions that were “made for the purpose of financing independent
2 expenditures” rather than all contributions to LUC.⁷⁷ The change in the amount of expenditures
3 reported reflects LUC counsel’s calculation of what part of the independent expenditure LUC
4 believed should be allocated to federal activity and what part should be allocated to state
5 activity.⁷⁸

6 These facts support several reporting violations. First, LUC did not file its 2016 Year-
7 End Report until March 7, 2017.⁷⁹ Thus, the report, which was due on January 31, 2017, was 35
8 days late and considered not filed.⁸⁰ Second, LUC failed to accurately report its independent
9 expenditures in its original 24-Hour Report, which was later amended to a 48-Hour Report. This
10 amended report reflects a decrease in contributions from \$172,000 to \$80,000 and a decrease in
11 the amount of total expenditures from \$48,750 to \$20,317.⁸¹

12 Notwithstanding these reporting violations, we do not recommend that the Commission
13 pursue them. Of these reporting violations, only the late filed 2016 Year-End Report was

⁷⁷ *Id.*

⁷⁸ *Id.* at 3-4.

⁷⁹ Referral at 2. The Year-End Report was due more than a month after the committee terminated under Connecticut law. The Year-End Report, and the amended 48-Hour Report, were filed on behalf of the defunct committee by Filson with the assistance of counsel he retained.

⁸⁰ 11 C.F.R. § 111.43(e)(1) (“Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.”).

⁸¹ Compare LUC 24-Hour Report with LUC 2016 Year-End Report and LUC 48-Hour Report. As discussed above, because our calculations of the allocation between federal and non-federal activity involved in LUC’s web ad result in a higher percentage being considered federal, LUC should have reported a higher amount for the amount of expenditures. See *supra* pp. 12-15.

1 referable under RAD's standards for referral.⁸² Even there, the Commission has recently
2 declined to take action in similar cases. For instance,
3
4 each respondent, like
5 LUC, failed to timely file a quarterly report after disclosing independent expenditures on
6 24-Hour or 48-Hour Reports. But those late-filed quarterly reports showed little or no previously
7 unreported activity, similar to LUC, which disclosed only \$6,071 in new activity in its Year-End
8 Report.⁸³ Finally, LUC is now defunct, was only active for one month, made only one media
9 buy, and substantially disclosed its activity for the public record.

10 Accordingly, we recommend that the Commission exercise its discretion and dismiss the
11 allegations that LUC failed to timely file a Year-End Report in violation of 52 U.S.C. § 30104(b)
12 or (c) and that LUC failed to timely file a 24-Hour or 48-Hour Report accurately disclosing its
13 independent expenditures in violation of 52 U.S.C. § 30104(g).⁸⁴

⁸² Of note, under the revised 2017-2018 RAD Review and Referral Procedures, this late report would not have triggered a referral because it was neither days late nor did it disclose more than in previously undisclosed activity. 2017-2018 RAD Review and Referral Procedures at 47.

⁸³

In other matters where an entity has had no new activity but filed the Quarterly/Year-End Report significantly later, the Commission has referred the matters to ADRO. *See e.g.*, RR 15L-38 (Americans for a Conservative Direction) (referring to ADRO where the entity's 2014 July Quarterly Report was filed 399 days after receiving notice it had failed to file and its report disclosed \$0 in new activity); RR 15L-43 (VoteVets.org Action Fund) (referring to ADRO where the entity's 2014 Year-End Report was filed 216 days after receiving notice it had failed to file and its report disclosed \$0 in new activity).

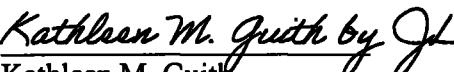
⁸⁴ *See Heckler*, 470 U.S. 821.

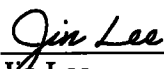
V. RECOMMENDATIONS

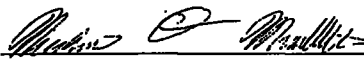
1. Decline to open a MUR relating to
2. Dismiss as a matter of prosecutorial discretion the allegation that Labor United for Connecticut and Paul Filson in his official capacity as treasurer violated 52 U.S.C. §§ 30102, 30103, or 30104;
3. Find no reason to believe that Labor United for Connecticut and Paul Filson in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118(a);
4. Dismiss as a matter of prosecutorial discretion the allegation that Labor United for Connecticut and Paul Filson in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) or (c) and 30104(g);
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letters; and
7. Close the file.

Lisa J. Stevenson.
Acting General Counsel

Date: 07-03-2018


Kathleen M. Guith
Associate General Counsel
for Enforcement


Jin Lee
Acting Assistant General Counsel


Nicholas Mueller
Attorney

Attachment:

1. Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**
2
3 **FACTUAL AND LEGAL ANALYSIS**
4

5 **RESPONDENT:** Labor United for Connecticut
6 and Paul Filson in his official
7 capacity as treasurer
8

MUR: 7213

9 **I. INTRODUCTION**

10 This matter was generated by a complaint filed with the Federal Election Commission by
11 J.R. Romano, Jr. and the Connecticut Republican Party. The Complaint in this matter alleges
12 that Labor United for Connecticut and Paul Filson in his official capacity as treasurer ("LUC"), a
13 Section 527 organization that was registered with the Connecticut State Elections Enforcement
14 Commission ("CSEEC"), failed to register and report with the Federal Election Commission
15 ("Commission") as a political committee and used non-federal funds to influence federal
16 elections in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"). In
17 support of these allegations, the Complaint contends that LUC paid for digital advertising
18 attacking Republican presidential candidate Donald Trump in October 2016 and therefore
19 triggered federal political committee status, which restricted LUC to raising and spending only
20 federal funds.¹ In addition, LUC failed to timely file its 2016 Year-End Report (Form 5)
21 supporting its independent expenditures.

22 LUC asserts that its major purpose was not "the nomination or election of federal
23 candidates," and therefore it did not meet the Act's definition of a political committee.² As to
24 any alleged reporting violations, LUC notes that it amended and correctly filed all reports

¹ Compl. at 1, Attach. 1 (Jan. 23, 2017).

² Resp. at 2 (Mar. 27, 2017).

1 regarding its independent expenditures with the Commission after receiving a Request for
2 Additional Information (“RFAI”) from RAD and seeking the advice of counsel.³ LUC does not
3 address the allegation that it impermissibly used state funds to oppose a federal candidate.

4 As set forth below, even if 50% of LUC’s overall spending was for federal campaign
5 activity (*i.e.*, the nomination or election of a Federal candidate), LUC was only active for a little
6 over one month, having been established in September 2016 and terminated with the CSEEC in
7 December 2016. During that time, LUC raised approximately \$198,000,⁴ \$48,750 of which was
8 spent on one media buy,⁵ and the bulk of its contributions (approximately \$109,400) were
9 refunded.⁶ Considering these facts, and in furtherance of the Commission’s priorities and
10 resources relative to other matters, the Commission exercises its prosecutorial discretion and
11 dismisses the allegations that LUC failed to register and report as a political committee in
12 violation of 52 U.S.C. §§ 30102, 30103, or 30104(a),⁷ and that LUC failed to timely report

³ *Id.* at 4; Although LUC had timely filed a 48-Hour Report (originally mislabeled as a 24-Hour Report) disclosing its independent expenditures, on February 17, 2017, RAD sent LUC an RFAI to inform LUC that it had failed to file a Year-End Report. LUC, Request for Additional Information (Feb. 17, 2017). LUC later filed a 2016 Year-End Report on March 7, 2017. *See infra* pp. 10-11.

⁴ LUC, CSEEC Termination Report (Dec. 7, 2016) at 2, [http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_Termination_Report_for_Independent_Expenditure_Political_Action_Committees_\(Non_Standard\)_45358.PDF](http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_Termination_Report_for_Independent_Expenditure_Political_Action_Committees_(Non_Standard)_45358.PDF).

⁵ LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment (Oct. 21, 2016) at 9, http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_43394.PDF; *see also* LUC, 24-Hour Report of Independent Expenditures (“LUC 24-Hour Report”) (Oct. 17, 2016).

⁶ LUC, CSEEC Termination Report at 6-12.

⁷ *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 independent expenditures in accordance with 52 U.S.C. § 30104(b) or (c), and 30104(g).⁸

2 Further, the Commission finds no reason to believe that LUC violated 52 U.S.C. §§ 30116(f) or
3 30118(a) by accepting or spending non-federal funds.

4 II. FACTS

5 LUC was formed by the SEIU Connecticut State Council as an Internal Revenue Code
6 section 527 political organization and registered with CSEEC as an independent
7 expenditure-only political committee.⁹ According to its treasurer, the purpose for creating LUC
8 was to “raise and spend funds on independent expenditures concerning Connecticut state
9 legislative races.”¹⁰ The organization was established on September 22, 2016,¹¹ and ceased
10 activity just over one month later, on October 26, 2016.¹² LUC terminated its registration with
11 CSEEC on December 7, 2016, and with the Internal Revenue Service (“IRS”) on January 31,
12 2017.¹³

13 In its existence, LUC raised \$198,071.32, spent \$88,682.74, and refunded the remaining
14 \$109,388.58 it had raised to its contributors.¹⁴ LUC spent \$48,750.01 on what appears to be its

⁸ See *id.*

⁹ Resp., Aff. of Filson ¶ 2-3; LUC, CSEEC Registration (Sept. 22, 2016)
https://seec.ct.gov/eCrisReporting/pdfviewer.aspx/noscan.pdf/SEEC8_10486_201609221411.PDF.

¹⁰ Resp., Aff. of Filson ¶ 2.

¹¹ *Id.* ¶ 3.

¹² *Id.* ¶ 5.

¹³ LUC, CSEEC Termination Report (Dec. 7, 2016) at 1; Resp., Aff. of Filson ¶ 6. LUC’s former treasurer retained counsel, filed reports, and responded on LUC’s behalf since its termination date.

¹⁴ LUC, CSEEC Termination Report at 2, 6-12 (Dec. 7, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016); LUC, CSEEC 24 Hour Independent Expenditure General Election 3 at 6 (Oct. 21, 2016), http://seec.ct.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24

1 only media buy,¹⁵ a series of web ads distributed beginning October 17, 2016.¹⁶ LUC disclosed
2 its spending for those ads in its 24-Hour Independent Expenditure Report filed with the
3 Commission on October 17, 2016.¹⁷ LUC received an RFAI from RAD on February 17, 2017,
4 regarding its failure to file a corresponding Form 5 fourth quarter or “Year-End” Report for
5 2016.¹⁸ On March 7, 2017, LUC responded, filing a 2016 Year-End Report that reflected the
6 portion of the total media buy expense that LUC believed should have been allocated to federal
7 activity under Commission regulations.¹⁹ On March 8, 2017, LUC amended its 24-Hour Report,
8 as a 48-Hour Report, and listed \$20,317 in independent expenditures, which also reflected
9 LUC’s allocation between state and federal activity.²⁰ The following chart summarizes LUC’s
10 disbursements:

Hour Independent Expenditure General Election 3 43284.PDF; LUC, CSEEC 24 Hour Independent
Expenditure General Election 5 – Amendment at 7 (Nov. 1, 2016), http://seec.ci.gov/eCrisReporting/Data/Attachment/Unassigned/SEEC40_24_Hour_Independent_Expenditure_General_Election_5_44358.PDF.

¹⁵ CSEEC 24 Hour Independent Expenditure General Election-Amendment at 9 (Oct. 21, 2016).

¹⁶ LUC, 48-Hour Report at 3 (Mar. 8, 2017) (“LUC 48-Hour Report”).

¹⁷ LUC 24-Hour Report (Oct. 17, 2017) (“LUC 24-Hour Report”).

¹⁸ LUC, Request for Additional Information (Feb. 17, 2017).

¹⁹ LUC, Year-End Report (Mar. 7, 2017) (“LUC 2016 Year-End Report”).

²⁰ LUC, 48-Hour Report; *see* Resp. at 3-4 (citing 11 C.F.R. § 106.1(a)).

LUC Disbursements	
Contribution Refunds	\$109,388.58
Bank Fees	\$112.95
Public Communications	\$48,750.01
Polling	\$6,646.50
Consulting	\$33,173.28
Total	\$198,071.32

1
2 LUC contends that its organizational purpose was to elect pro-union legislators to the
3 Connecticut state legislature.²¹ Moreover, it states that at the time of its formation, "LUC had no
4 intention to carry out public communications or any other activities with respect to federal
5 elections."²² LUC explains that at the recommendation of a political consultant, however, it
6 determined that it would be advantageous as part of its media strategy to tie state candidates to
7 then-Republican presidential candidate Trump, who they believed to be unpopular with
8 Connecticut voters.²³

9 According to the Response, LUC's only media buy was composed of three web ads that
10 were rotated equally.²⁴ The first contained no references to Trump or any other federal
11 candidate.²⁵ The second ad included a picture of Trump and the text: "Stop Donald Trump and
12 Republican [rotating state legislative candidate]'s attack on women and families Vote on 11/8."²⁶

²¹ Resp., Aff. of Filson ¶ 9.

²² *Id.* ¶ 10.

²³ Resp. at 3.

²⁴ *Id.*

²⁵ *Id.*, Attach. A.

²⁶ *Id.*, Attach. B.

1 The third ad included a picture of a woman's hand with the word "NO" written on it and the text:
2 "NO to the vicious Trump campaign against women and families. Vote NO on Trump and
3 Republican [rotating state legislative candidate] Nov. 8."²⁷

4 **III. LEGAL ANALYSIS**

5 **A. Political Committee Status**

6 The Act and Commission regulations define a "political committee" as "any committee,
7 club, association or other group of persons which receives contributions aggregating in excess of
8 \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000
9 during a calendar year."²⁸ In *Buckley v. Valeo*,²⁹ the Supreme Court held that defining political
10 committee status "only in terms of the annual amount of 'contributions' and 'expenditures'"
11 might be overbroad, reaching "groups engaged purely in issue discussion."³⁰ To cure that
12 infirmity, the Court concluded that the term "political committee" "need only encompass
13 organizations that are under the control of a candidate or the *major purpose of which is the*
14 *nomination or election of a candidate*."³¹ Accordingly, under the statute as thus construed, an
15 organization that is not controlled by a candidate must register as a political committee only if
16 (1) it crosses the \$1,000 threshold and (2) it has as its "major purpose" the nomination or election
17 of federal candidates.

27 *Id.*, Attach. C.

28 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5(a).

29 424 U.S. 1 (1976).

30 *Id.* at 79.

31 *Id.* (emphasis added).

Here, even if LUC had triggered political committee status, LUC was only active for one month, and during that time made only one media buy, worth \$48,750.01. Further, LUC refunded most of the contributions it accepted and substantially disclosed its independent expenditures for the public record.

Under these circumstances, the Commission does not believe that this matter merits the use of further agency resources and dismisses as a matter of prosecutorial discretion the allegations that LUC violated 52 U.S.C. §§ 30102, 30103, or 30104 by failing to register and report as a political committee.³²

B. Use of Impermissible Funds

The Complaint also alleges that LUC violated the Act by spending non-federal funds to support or oppose a federal candidate.³³ Even if LUC was in fact a federal political committee, it appears to have acted as an independent expenditure-only political committee, which could have accepted (and spent) contributions in unlimited amounts and from some otherwise prohibited sources.³⁴

An independent expenditure is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and that is not made in concert or cooperation with, or at the request or suggestion of, the candidate or his or her committee or agent, or a

³² See *Heckler*, 470 U.S. 821.

³³ Compl. at 1.

³⁴ See Advisory Op. 2010-11 (Commonsense Ten) at 3 (citing *Citizens United*, 558 U.S. 310 and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*)) and stating that “corporations, labor organizations, and political committees may make unlimited independent expenditures from their own funds, and individuals may pool unlimited funds in an independent expenditure-only political committee”).

1 political party committee or its agent.³⁵ Here, the Complaint fails to allege any facts indicating
2 that LUC engaged in coordination with a federal candidate or party committee and it was
3 registered as an independent expenditure committee with the State of Connecticut. Further, LUC
4 asserts that it included Trump in its communications not as a result of coordination with any
5 federal candidate, but on the advice of a consultant in order to persuade voters who disliked
6 Trump to oppose state legislative candidates in targeted races because they were running on his
7 ticket. Accordingly, it appears that it would have operated as an independent expenditure-only
8 committee that could have permissibly accepted (and spent) non-federal funds. Therefore, the
9 Commission finds no reason to believe that LUC violated 52 U.S.C. §§ 30116(f) or 30118(a) by
10 accepting or spending non-federal funds.

11 **C. Failure to Timely Report Independent Expenditures**

12 Under the Act, persons must file reports disclosing independent expenditures over a
13 certain amount.³⁶ If any person, including a political committee, makes independent
14 expenditures aggregating \$10,000 or more within a calendar year with respect to a given election
15 any time up to and including the 20th day before the election, the person must file a 48-Hour
16 Report disclosing those expenditures.³⁷ If the person makes independent expenditures
17 aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24
18 hours, before the date of an election, the person must file a 24-Hour Report disclosing those

³⁵ 52 U.S.C. § 30101(17).

³⁶ See 52 U.S.C. § 30104(b)(4)(H)(iii), (5)(B)(iii), and (c).

³⁷ *Id.* § 30104(g)(2); 11 C.F.R. § 109.10(c). The person must file additional reports within 48 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$10,000. *Id.*

1 expenditures.³⁸ In addition to these 24-Hour and 48-Hour Reports, persons who are not political
2 committees must file a quarterly report for any quarterly period in which independent
3 expenditures exceed \$250 with respect to a given election and for any subsequent quarterly
4 period during the calendar year when additional independent expenditures are made.³⁹

5 Here, LUC did not report its independent expenditures as a political committee but as a
6 “person (other than a political committee),” under 52 U.S.C. § 30104(c). It filed a 24-Hour
7 Report on October 17, 2016 reporting an independent expenditure in the amount of \$48,750.01
8 and contributions of \$172,000.⁴⁰ On March 7, 2017, 35 days after receiving an RFAI from RAD,
9 LUC filed a Year-End Report,⁴¹ and on March 8, 2017, LUC amended its 24-Hour Report as a
10 48-Hour Report.⁴² Both of those March-filed reports indicate a reduction in the amount of the
11 independent expenditures, now reporting only \$20,317.⁴³ These reports also disclose lower

³⁸ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 109.10(d). The person must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000. *Id.*

³⁹ 11 C.F.R. § 109.10(b); *see* 52 U.S.C. § 30104(c); *see also* Explanation and Justification for Section 109.10, 68 Fed. Reg. 404, 415 (Jan. 3, 2003) (stating that independent expenditures greater than \$250 must be filed in accordance with the quarterly reporting schedule specified in sections 104.5(a)(1)(i) and (ii)). Political committees accomplish this disclosure via ongoing quarterly and pre- and post-election reports regular reporting of contributions and expenditures. *See* 52 U.S.C. §§ 30104(a)(4), (b). If LUC were a political committee, it should have reported its contributions and expenditures in this manner. *See supra* p. 7 (dismissing as to the allegations that LUC failed to register and report as a political committee).

⁴⁰ LUC 24-Hour Report.

⁴¹ LUC 2016 Year-End Report.

⁴² LUC 48-Hour Report. As the expenditure occurred more than 20 days prior to the election a 48-Hour Report was appropriate rather than a 24-Hour Report. 52 U.S.C. § 30104(g)(1) and (2).

⁴³ *Compare* LUC 24-Hour Report *with* LUC 2016 Year-End Report and LUC 48-Hour Report.

1 amounts of total contributions, with the 48-Hour Report indicating \$80,000 in total contributions
2 and the Year-End Report indicating \$86,071.32 in total contributions.⁴⁴

3 In its response, LUC explains that these discrepancies arose from the original 24-Hour
4 Report being filed “without legal analysis of which contributions to report and how to divide
5 costs between the federal and state content of the ads.”⁴⁵ After receiving the RFAI and
6 Complaint in MUR 7213, LUC sought the assistance of counsel and filed the 2016 Year-End and
7 amended 48-Hour Reports. In these later filed reports, LUC included only contributions that
8 were “made for the purpose of financing independent expenditures” rather than all contributions
9 to LUC.⁴⁶ The change in the amount of expenditures reported reflects LUC counsel’s calculation
10 of what part of the independent expenditure LUC believed should be allocated to federal activity
11 and what part should be allocated to state activity.⁴⁷

12 These facts indicate reporting violations. First, LUC did not file its 2016 Year-End
13 Report until March 7, 2017.⁴⁸ Thus, the report, which was due on January 31, 2017, was 35 days
14 late and considered not filed.⁴⁹ Second, LUC failed to accurately report its independent

⁴⁴ *Id.*

⁴⁵ Resp. at 4.

⁴⁶ *Id.*

⁴⁷ *Id.* at 3-4.

⁴⁸ The Year-End Report was due more than a month after the committee terminated under Connecticut law. The Year-End Report, and the amended 48-Hour Report, were filed on behalf of the defunct committee by Filson with the assistance of counsel he retained.

⁴⁹ 11 C.F.R. § 111.43(e)(1) (“Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.”).

1 expenditures in its original 24-Hour Report, which was later amended to a 48-Hour Report. This
2 amended report reflects a decrease in contributions from \$172,000 to \$80,000 and a decrease in
3 the amount of total expenditures from \$48,750 to \$20,317.⁵⁰

4 Nevertheless, LUC is now defunct, was only active for one month, made only one media
5 buy, and substantially disclosed its activity for the public record.

6 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the
7 allegations that LUC failed to timely file a Year-End Report in violation of 52 U.S.C. § 30104(b)
8 or (c) and that LUC failed to timely file a 24-Hour or 48-Hour Report accurately disclosing its
9 independent expenditures in violation of 52 U.S.C. § 30104(g).⁵¹

⁵⁰ Compare LUC 24-Hour Report with LUC 2016 Year-End Report and LUC 48-Hour Report.

⁵¹ See *Heckler*, 470 U.S. 821.